

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.93/2016

Dated this Monday, the 18th day of February, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)

Shri Purushottam Baliram Barhate,
Aged – 76, Ex YKC-LOCO shed Bhusawal,
R/o 37, Near Shriram Mandir, Near Ast Bhuja Kirana Shop,
Hanuman Nagar, Bhusawal
Dist. Jalgaon, Pin 425 201.
(By Advocate Shri M.S. Raybhole)

... *Applicant*

VERSUS

1. Union of India, Through the General Manager,
Central Railway, Head Quarter Office,
CST, Mumbai 400 001.
2. Additional Divisional Railway Manager,
Central Railway, Bhusawal Division,
Bhusawal, Dist. Jalgaon, Pin 425 201.
3. Divisional Mechanical Engineer,
Central Railway, Bhusawal Division,
Bhusawal, Dist. - Jalgaon, Pin 425 201.
4. Divisional Railway Manager,
Personnel Branch For DRM(P) BSL,
Central Railway, Bhusawal Division,
Dist. - Jalgaon, Pin 425 201.
5. Sr. Divisional Finance Manager,
Central Railway, Bhusawal Division,
Bhusawal, Dist. - Jalgaon, Pin 425 201. ... *Respondents*
(By Advocates Shri R.R.Shetty)

Order reserved on 08.01.2019

Order delivered on 18.02.2019

O R D E R

Per : Dr. Bhagwan Sahai, Member (Administrative)

Shri Purushottam Baliram Barhate has

filed this OA seeking quashing and setting aside of order dated 23.11.2015 passed by the respondents and direction to the respondents to grant him compassionate allowance from 22.05.1980 with all consequential benefits and to provide him cost of this application.

2. Brief Facts :-

2(a). The applicant was appointed as Yard Khalasi on 22.08.1960 and worked under the control of respondent No.3 i.e. Divisional Mechanical Engineer, Central Railway, Bhusawal, Jalgaon and had rendered 19 years of service with the Railways. Then he was removed from service by order of 22.05.1980 passed by the Disciplinary Authority i.e. respondent No.3.

2(b). The Disciplinary Authority is also the competent authority for granting compassionate allowance as per the Railway Board Circulars of 09.05.2005 and 04.11.2008. However, the claim of the applicant for grant of compassionate allowance was rejected by the respondent No.4 i.e. Divisional Railway Manager,

Central Railway, Bhusawal by order of 23.11.2015 after the approval of respondent No.2 i.e. Additional Divisional Railway Manager, Central Railway, Bhusawal and respondent No.3 i.e. Divisional Mechanical Engineer, Central Railway, Bhusawal.

2(c). The respondent No.5 in the present OA i.e. Senior Divisional Finance Manager, Central Railway, Bhusawal is having the record of the applicant (MR 4/3/150) about his removal from service but the stand taken by the respondents in rejecting his request that all record of the applicant is not available with them is not correct.

2(d). The applicant claims that he submitted applications on 31.07.2009, 24.11.2013, 24.01.2014 and 28.05.2015 under Right to Information Act asking for copies of the DAR proceedings against him but no response has been received. Based on the record available with him, he has submitted the details but even then his request has been rejected.

2(e). Because of uncontrolled circumstances in his domestic life, the applicant remained

absent from duty from 03.04.1976 to 06.01.1977. For this unauthorized absence from duty, a charge memo was issued to him on 08.03.1977; after submission of his defence, the Inquiry Officer conducted the inquiry and submitted his report on 30.07.1979 holding that charges against the applicant had been proved. The applicant claims that he never attended the inquiry which was conducted on 23.02.1978, 25.04.1978, 18.12.1978, 23.02.1979 and 05.09.1979 and it was conducted ex-parte.

2(f). Subsequently the Disciplinary Authority issued a show cause notice to him on 27.02.1980 proposing removal from service and thereafter, passed the order on 22.05.1980 for his removal from service (Annex A-6).

2(g). As per the Railway Board Circular of 09.05.2005, the power to sanction or otherwise compassionate allowance is a discretionary power vested in the authority competent to remove or dismiss the railway employee and out of the past cases in which a competent authority has not sanctioned

compassionate allowance at the time of passing the order of removal or dismissal or immediately there after cannot be reopened for review on the basis of the representations received. Further the decision for grant of compassionate allowance or gratuity or both or otherwise shall be taken at the time of passing the orders of removal / dismissal keeping in view guidelines in para 310 of Manual of Railway Pension Rules, 1950.

2(h). However, as per the Railway Board circular of 04.11.2008, the instructions of Railway Board dated 09.05.2005 were considered again by the Railway Board in consultation with the Department of Pension and Pensioners' Welfare and reiterated that in cases where a decision has already been taken by the Disciplinary Authority not to grant compassionate allowance such decision is final, it should not be reviewed at any later stage. However, out of the past cases in which Disciplinary Authority had not passed any specific order for or against grant of compassionate allowance, if any

case appears to be deserving for consideration to be given, it may be reviewed by the concerned Disciplinary Authority on receipt of representation of the employee or his family members.

2(i). In para 3(iii) of the circular of 04.11.2008 it has been further mentioned that not only those past cases can be reviewed where record pertaining to the D&A proceedings and service record are available. Accordingly, the applicant's case ought to have been considered and compassionate allowance sanctioned to him but his request has been rejected by the respondents by order of 23.11.2015. Hence, this OA.

3. Contentions of the parties -

The applicant has contended that -

3(a). he fulfills the terms and conditions laid down in the Railway Board circular of 04.11.2008 and accordingly has been representing for it repeatedly thereafter for grant of compassionate allowance but it has not been sanctioned to him. The ground taken by the respondents in the order of

23.11.2015 that his case was 35 years old and no previous service record and personal file were available with them, hence, his case for compassionate allowance cannot be considered is wrong, illegal and arbitrary;

3(b). preservation of all service record is duty of the Railway administration and if it is not traceable with the respondents, they should rely on the record produced by the applicant;

3(c). approval of respondents Nos.2 and 3 to the order passed by the respondent No.4 dated 23.11.2015 is illegal and void; and

3(d). the applicant is 76 years old (at the time of filing this OA in February, 2016) and his wife is 73 years old and both of them are suffering from hypertension. Therefore, the compassionate allowance should be sanctioned to him from 22.05.1980. The respondents were supposed to sanction him compassionate allowance at the time of his removal from service but they failed to do so.

The respondents have contended that -

3(e). the stipulations under Railway Board

circulars dated 09.05.2005 and 04.11.2008 are very clear and categorical that cases of dismissal or removal imposed prior to 2005 can also be considered for grant of compassionate allowance provided the past service record is available. However, in the present case, after due application of mind, the Competent Authority has rejected the request of the applicant because of non-availability of the record of the applicant which is 35 years old;

3(f). as already stated, the Railway Board circulars specifically stipulate that only those past cases can be reviewed where records pertaining to Discipline and Appeal proceedings and service record are available. The applicant has enclosed with the OA, his letter of 10.09.2015 (Annex A-15) but in spite of having made efforts, the relevant documents and service record of the applicant could not be traced by the respondents. Therefore, due to non-availability of the service record of the applicant, the respondents were not in a position to accept his request for grant of

compassionate allowance;

3(g). against his removal from the service, the applicant had also preferred an appeal and if he is still aggrieved with the order of his removal from service dated 22.05.1980, he should have challenged that order. However, he has not challenged the order of his removal from service and after 35 years of his removal from service, he is seeking sanction of compassionate allowance with all consequential benefits; and

3(h). the present OA has been filed belatedly, beyond the period of limitation and thus, it is after having slept for over six years of his application dated 31.07.2009. The applicant has not been able to justify the delay. In support of their contention, the respondents have listed these 11 case laws and contend that the present OA deserves to be dismissed :-

“(i). *P.S. Sadashivawswamy V/S S/O Tamil Nadu Air 1974 SC 2271.*

(ii). *Jacob Abraham and others, A.T. Full Bench Judgments, 1994-96.*

(iii). *Ram Chandra Samanta V/S. UOI 1994 (26) ATC 228.*

(iv). *S.S.Rathore V/S S/O M.P. 1989 (2) ATC 521.*

(v). *Bhoop Singh V/S UOI IR 1992 SC 1414.*

(vi). *Secretary to Govt. of India V/S Shivaram M. Gaikwad (1995) 30 ATC 635 = 1995 (6) SLR (SC) 812.*

(vii). *Ex. Capt. Harish Uppal V/S UOI 1994 (2) SLJ 177.*

(viii). *L. Chandra Kumar V/S UOI 1997 (2) SLR (SC) 1.*

(ix). *AIR 199 SC 564 Dattaram V/S Union of India.*

(x). *1996 LLJ 1127 (SC) UOI V/S Bhagnoor Singh (1999) 8 SC 304 Ramesh Chand Sharma V/S Udhamp Singh Kamal & Ors.*

(xi). *2002 (5) SLR (SC) 307 E. Parmasivan & Ors VS UOI & Ors. AT Act, 1985-Article 226-Writ Petition-Delay and latches-Maintainability of writ petition-Limitation-Application before Tribunal in 1995, by retired MES officers Retirement between 31-01-1974 to 31-05-1985, for fixation of pay in term of OM dated 12-1-1976.”*

3(i). Since the service record and record of disciplinary proceedings against the applicant were not available with the respondents, grant of compassionate allowance was not considered by the Competent Authority at any stage. Hence, the OA be dismissed.

4. Analysis and conclusion -

We have perused the OA memo and its

annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents, various case laws cited by the parties and considered the arguments advanced by both of them on 08.01.2019.

4(a). From the record considered as above, we note that the applicant was removed from service by the order of 22.05.1980. A decision for grant of compassionate allowance or gratuity or both or otherwise has to be taken by the Competent Authority at the time of passing of order of removal or dismissal from service in view of the guidelines in para 310 of the Manual of Railway Pension Rules, 1950.

4(b). On the subject of grant of compassionate allowance to the Railway employees, the relevant stipulations under the rules and instructions are covered in para 310 of Manual of Railway Pension Rules, 1950 and Rule 65 of Railway Servant (Pension) Service Rules, 1993. As stated in the Railway Board letter of 09.05.2005 in terms of Rule 65, if the case is deserving of special consideration, the authority

competent to dismiss or remove the Railway servant from service may sanction a compassionate allowance not exceeding 2/3rd of pension or gratuity or both, which would have been admissible to him, if he had retired on the compensation pension.

4(c). The circular of 09.05.2005 further specified that the power to sanction or otherwise compassionate allowance is a discretionary power vested in the authority competent to remove or dismiss the railway employee, to be exercised by that authority suo-motu, at the time of passing orders of dismissal or removal from service or immediately thereafter. Hence, past cases where the competent authority in exercise of its discretionary powers had not sanctioned compassionate allowance at the time of passing orders of removal or dismissal or immediately thereafter cannot be reopened for review on the basis of representations received from the removed or dismissed employee and members of his family at a later date.

However, by the Railway Board Circular

of 04.11.2008, certain relaxation was allowed for deciding past cases for grant of compassionate allowance, in which disciplinary authorities have not passed any specific orders for or against grant of compassionate allowance. Para 3(i) of that circular specifically mentions that only those past cases can be reviewed where records pertaining to D&A proceedings and service record are available. Para 3(iii) states that not only the grounds on which the Railway servant was removed / dismissed, but also the kind of service rendered should be taken into account.

4(d). In the present case, the applicant was removed from service by order of 22.05.1980, he claims that he represented to the respondents since 2009 for grant of compassionate allowance to him but with the OA he has attached the copy of only application dated 31.07.2009. This application was submitted by him after 29 years of his removal from service. Therefore, he himself had slept over almost three decades to seek grant of compassionate

allowance. In our considered view even by that time i.e. in 2009 also the claim of the applicant had become stale.

4(e). The applicant's claim that it was the responsibility of the respondents to preserve his record of service and disciplinary proceedings against him, but as they failed to do so, the record produced by him should accepted by them. This is not acceptable because in order to take a specific decision, the competent respondent authority has necessarily to examine available with it all service record and the record of the disciplinary proceedings against the applicant to firm up its mind. Since in spite of efforts made, the respondents were not able to trace all the record of the applicant (service record and that of the disciplinary proceedings); in its absence they could not sanction him the compassionate allowance. It seems justified.

4(f). We also note that the power of the Competent Authority to sanction compassionate allowance is a discretionary power. In our view, the concerned authority

entertained the applicant's case for consideration even after 29 years of his removal from service, has applied its mind and has felt constrained in deciding it in his favour. Hence, we do not find any flaw or infirmity in it. Consequently, the OA deserves dismissal.

5. Decision -

OA No.93/2016 is dismissed. The parties to bear their own cost.

(Ravinder Kaur)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

*kmg**

*SD
22/2/19*

